REMARKS

This communication is responsive to the Examiner's Report mailed 21 February 2008, as extended under 37 C.F.R. § 1.136(a) by payment of appropriate extension of time fees.

A Request for Continued Examination pursuant to 37 C.F.R. § 1.114 together with the accompanying fee are enclosed herewith.

Claims 1-7, 12-18, 20-32, 34-41, 43-45 and 47-55 were pending prior to this amendment. Claims 15, 17, 20, 27, 28, 31, 32 and 34-40 have been withdrawn pursuant to a species election.

In this response, the the Applicant has added new claim 56. New claim 56 is submitted to be completely supported by the application as originally filed and to add no new matter.

Claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41, 43-45, 47-56 remain for examination.

Claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55

The Examiner has raised the combination of STEELER INC. - Deflection Track ("Steeler"), US patent No. 7,223,043 ("Andrews") and US patent No. 3,999,875 ("Simon") in connection with claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55. The Applicant respectfully submits that claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55 patentably distinguish the combination of Steeler, Simon and Andrews. The Applicant submits further that it would not be obvious to combine Steeler with Simon to arrive at the features of claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55. The Applicant therefore submits that these claims are patentable in relation to the combination of Steeler, Andrews and Simon.

As correctly identified by the Examiner on page 2 of the Office Action, Steeler does not disclose or suggest the particulars of the "deformable portion" recited in claim 1. More particularly, Steeler fails to teach or suggest "each leg comprising a deformable portion located between the web and a distal edge of the leg; wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the

bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle."

Neither Andrews nor Simon remedies this deficiency.

Andrews

As understood by the Applicant, Andrews discloses a joining arrangement for use in the construction of stud frames and for releasable attachment of a studs (2) to tracks. Studs (2) have V-shaped indents (9, 10) and the tracks have corresponding V-shaped indents (16, 17), such that studs (2) can be inserted into the tracks and pivoted into place as shown in Figures 2 and 3 (see arrow 22). The Simon studs (2) extend all the way down to the bottom of (11) of the Simon tracks (see Figures 3 and 5) and therefore there is no room for the movement of studs (2) relative to the track – see col. 9, ln. 63-64 which expressly states "relative movement between the stud and plate is not available once the members are fitted". Andrews also discloses "telescoping" studs (shown in Figures 7, 8 and 9) which are two-part studs (see telescoping elements (41, 42)) wherein telescoping element (42) fits inside telescoping element (41) such that the studs can extend or retract to provide different lengths. While these telescoping studs (41, 42) permit movement of telescoping elements (41, 42) relative to one another, this movement is not facilitated by deformation of the track walls.

On page 2 of the Office Action, the Examiner expressly cites col. 10, ln. 39-44 and Figure 6 of Andrews as disclosing the features of the claim 1 "deformable portion" that are missing from Steeler. With respect, the Applicant submits that the Examiner has misinterpreted the teachings of Andrews. The Applicant submits that neither this cited passage, nor any other aspect of Andrews, discloses tracks with sidewalls incorporating a "deformable portion" having the features recited in claim 1. More particular, neither the cited passage, not any other aspect of Andrews, discloses "each leg comprising a deformable portion located between the web and a distal edge of the leg; wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle" as recited in claim 1.

Claim 1 recites that each "deformable portion" comprises a number of bends which are "at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle". Andrews fails to teach or suggest such a feature. Col. 10, ln. 39-44 of Andrews does not describe tracks with deformable sidewalls, but rather this passage from Andrews describes two-part, telescoping studs (41, 42) wherein telescoping element (42) fits inside telescoping element (41) such that the studs can extend or retract to provide different lengths. Figure 6 of Andrews illustrates an end-view of the stud and track of the Andrews joining arrangement. The dashed lines shown in Figure 6 are used merely to refer to acute and obtuse angles (101, 103) of the V-shaped indents – see col. 11, ln. 46-50. As can be seen clearly in Figures 3 and 5, the Simon studs (2) extend all the way down to the bottom of (11) of the Simon tracks. Accordingly, there is no room for deformation of the sidewalls of the Andrews track to permit corresponding movement of studs (2) relative to the track. This aspect of Andrews is reinforced by the following passages from Andrews:

> Where the top and bottom plates of a stud frame are prefabricated with formations which dictate the exact location of the studs there is no inherent flexibility in the positioning of the studs ...
> (see col. 9, ln. 54-57)

> Correcting stud location ... with the existing systems employing corresponding formations pressed into the walls of the plate and stud members as relative movement between stud and plate is not available once the members are fitted.
> (see col. 9, ln. 59-64)

On the Applicant's careful reading, there is no other disclosure in Andrews which teaches or suggests tracks with sidewalls incorporating a "deformable portion" having bends that are compressible or expandable as recited in claim 1.

In addition, claim 1 recites that the "deformable portion" comprises "four or more longitudinally extending bend lines to form four or more corresponding bends" and that each of the bends is compressible or expandable. This claim 1 feature is not disclosed or suggested by Andrews. In

contrast, the V-shaped indents (16, 17) of the Andrews track comprise only three bends and, as discussed above, are not compressible or expandable.

Based on this reasoning the Applicant submits that the addition of Andrews fails to overcome the deficiencies of Steeler. More particularly, claim 1 patentably distinguishes the combination of Steeler and Andrews. Claims 2-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55 depend from claim 1 and are submitted to be patentable over the combination of Steeler and Andrews for at least this reason.

Simon

As understood by the Applicant, Simon relates to adjustable storage arrangements (e.g. racks) which include a plurality of interconnectable, elongate shaped members comprising uprights and cross-pieces which have substantially the same open or channel cross-section, generally resembling a "triple sigma" contained within a rectangle. Trapezoidal re-entrant areas (e.g. EGIK, FHJL and OQRP – see Figure 1) are provided on three sides of the cross-sectional shape.

As correctly identified by the Examiner on page 2 of the Office Action, Steeler does not teach or suggest the particulars of the "deformable portion" recited in claim 1. As discussed above, the combination of Steeler and Andrews does not disclose the particulars of the "deformable portion" recited in claim 1. More particularly, the combination of Steeler and Andrews fails to teach or suggest "each leg comprising a deformable portion located between the web and a distal edge of the leg; wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle."

Simon fails to remedy this deficiency.

Simon actually teaches directly away from the features of the claim 1 "deformable portion". In direct contrast to deformability of the claim 1 "deformable portion", Simon teaches that the shape of the trapezoidal indents (EGIK, FHJL) is used to increase the rigidity of the sidewalls of the

elongate members (1). This aspect of Simon is reinforced by the following statements excerpted directly from Simon:

> The present invention makes it unnecessary to use struts by employing, on the one hand, a novel type of shaped member, both for the uprights and the cross-pieces, the cross-sectional shape of which provides greater geometrical inertia, or a more stable geometry, and enables it better to withstand flexure and torsion ...
> (see col. 1, ln. 38-44)

> The foregoing embodiments are described by way of example, and it is to be understood that many modifications may be made without exceeding the scope of the invention as defined by the appended claims, and whilst achieving the object which is to strengthen the cross-sectional configuration common to the uprights and cross-pieces by means of trapezoidal recesses or portions which give it a "triple sigma" shape ...
> (see col. 4, ln. 17-30)

Based on these statements, Simon clearly teaches that its trapezoidal, "triple sigma" regions are used to stiffen the elongate members and to otherwise combat flexure. This aspect of Simon clearly teaches away from the deformability of the claim 1 "deformable portion". More particularly, this aspect of Simon clearly teaches away from a "deformable portion ... wherein each deformable portion is bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and each of the bends is at least one of: compressible to reduce its interior angle and expandable to increase its exterior angle."

Based on this reasoning, with respect to the features of the claim 1 "deformable portion", Simon fails to remedy the deficiencies with Steeler and Andrews. Consequently, the Applicant submits that claim 1 patentably distinguishes the combination of Steeler, Andrews and Simon. Claims 2-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55 depend from claim 1 and are submitted to be patentable over the combination of Steeler, Andrews and Simon for at least this reason.

In addition to failing to remedy the deficiencies with Steeler and Andrews, the Applicant respectfully submits that it would not be obvious to combine Simon with Steeler.

Simon and Steeler represent widely different fields of technology. Steeler describes a deflection track which applies to construction of "ceiling connection of non-load bearing walls" – see left hand column. In contrast, the Simon invention "relates to the art of storage and more particularly to that of adjustable racking..." – see col. 1, ln. 5. The fields of non-load bearing wall construction and storage are non-analogous. For example, the construction of non-load bearing walls is used to separate rooms and to provide privacy within a building. Non-load bearing walls do not provide buildings with structural integrity. That is why they are referred to as "non-load bearing". In contrast, racking systems must be sufficiently strong to support heavy loads. The need for sufficiently strong racking systems is expressly described by Simon at col. 1, ln. 32-35, where prior art racking systems are described as "lack[ing] rigidity" with a tendency to "bow and tip", and also at col. 1, ln. 41-43, where Simon describes his racking technology as overcoming this prior art shortcoming by providing a "more stable geometry ... to withstand flexure and torsion". The Applicant respectfully submits that the skilled artisan would not look to the Simon racking technology when considering how to modify the Steeler non-load bearing wall construction technology.

Furthermore, modifying the Steeler deflection track to include the sidewalls of the Simon elongate members would preclude the operation of the Steeler et al. deflection track. The Steeler deflection track is used for "ceiling connection of non-load bearing walls" – see left hand column. In order to use the Steeler deflection track for this purpose, it is necessary to attach the tops of studs to the track in a manner which facilitates "ceilings to deflect under loading without affecting the wall beneath" – see left hand column. The Steeler drawing shows a fastener which appears to be used for this purpose - i.e. to attach studs to the sidewall of the deflection track. The sidewalls of the Simon elongate members include inwardly extending tail sections (CA and BD – see Figure 1). The tail sections (CA and BD) of the Simon elongate members would act to prevent attachment of studs in a manner that facilitates deflection of the ceiling as described by Steeler. Accordingly, the Applicant submits that the skilled artisan would not consider it obvious

to modify the Steeler deflection track using the shape of the sidewalls of the Simon elongate members.

Based on this reasoning, the Applicant submits that it would not be obvious to combine Simon with Steeler to provide the features of claim 1. Claims 2-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55 depend from claim 1 and the Applicant submits that it would not be obvious to combine Simon with Steeler to provide the features of these claims for at least this reason.

Additional Comments - Claim 30

The Applicant respectfully submits that claim 30 recites additional features which patentably distinguish the combination of Steeler, Andrews and Simon.

Steeler expressly states its deflection track is for "ceiling connection of non-load bearing walls" in a manner which allows "ceilings to deflect under loading without affecting the wall beneath" – see left hand column. For application to ceiling connection, the Steeler deflection track has to be oriented to provide a downwardly opening channel for connection to the tops of studs. Under the paragraph labeled "1)" in the right hand column, Steeler also expressly states that "standard lower track is used in these walls." Accordingly, Steeler expressly teaches that the upper track and lower track are different – i.e. the upper track is "deflection track" and the lower track is "standard lower track".

Claim 30 (when including the claims from which it depends) recites that the track is used in a building wall comprising an "opposing track and one or more studs" and that the "opposing track is substantially similar to the track and an opposing end of each stud is coupled to the opposing track in a manner that permits relative movement between the stud and a web of the opposing track." This feature is not disclosed by Steeler. More particularly, as discussed above, Steeler teaches directly away from this claim 30 feature by expressly stating that its deflection track is used "for ceiling connection" and walls are formed using "standard lower track".

Neither Simon nor Andrews remedy this deficiency by disclosing or suggesting any reason to modify this aspect of Steeler.

Based on this reasoning, the Applicant submits that claim 30 further patentably distinguishes the combination of Steeler, Andrews and Simon.

Conclusions with respect to Claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55

For the reasons set out above, the Applicant submits that claims 1-7, 12-14, 16, 18, 21-26, 29, 30, 41 and 50-55 patentably distinguish the combination fo Steeler, Andrews and Simon.

Claims 43-45

The Examiner has raised the combination of Steeler, Andrews and Simon in connection with claims 43-45. The Applicant submits that claims 43-45 patentably distinguish the combination of Steeler, Andrews and Simon and that it would not be obvious to combine Steeler with Simon to arrive at the features of claims 43-45.

Claim 43 recites a track having a pair of legs wherein at least one of the legs comprises "a deformable portion located between its distal edge and the elongated member, the deformable portion bent along four or more longitudinally-extending bend lines to form four or more corresponding bends, each bend being at least one of: compressible to reduce its interior angle and expandable to increase its interior angle."

As correctly identified by the Examiner, Steeler fails to disclose these features of the claim 43 "deformable portion". For the reasons discussed in detail above, neither Andrews nor Simon remedy this deficiency. More particularly, neither Andrews nor Simon discloses the features of the claim 43 "deformable portion" which are missing from Steeler.

In addition, as discussed above, it would not be obvious to combine the features of the Simon racking technology with the Steeler deflection track to modify the Steeler deflection track.

Based on this reasoning, the Applicant submits that claim 43 patentably distinguishes the combination of Steeler, Andrews and Simon. Claims 44 and 45 depend from claim 43 and are submitted to be patentable in relation to the combination of Steeler, Andrews and Simon for at least this reason.

Claims 47-49

The Examiner has raised the combination of Steeler, Andrews and Simon in connection with claims 47-49. The Applicant submits that claims 47-49 patentably distinguish the combination of Steeler, Andrews and Simon and that it would not be obvious to combine Steeler with Simon to arrive at the features of claims 47-49.

Claim 47 recites a track having a pair of legs "wherein at least one of the one or more legs comprises a deformable portion bent along four or more longitudinally-extending bend lines to form four or more corresponding bends and deforming the one or more legs comprises at least one of: compressing at least one of the four or more bends to reduce its interior angle and expanding at least one of the four or more bends to increase its interior angle."

As correctly identified by the Examiner, Steeler fails to disclose these features of the claim 47 "deformable portion". For the reasons discussed in detail above, neither Andrews nor Simon remedy this deficiency. More particularly, neither Andrews nor Simon discloses the features of the claim 47 "deformable portion" which are missing from Steeler.

In addition, as discussed above, it would not be obvious to combine the features of the Simon racking technology with the Steeler deflection track to modify the Steeler deflection track.

Based on this reasoning, the Applicant submits that claim 47 patentably distinguishes the combination of Steeler, Andrews and Simon. Claims 48 and 49 depend from claim 47 and are submitted to be patentable in relation to the combination of Steeler, Andrews and Simon for at least this reason.

Claim 56

The Applicant has added new claim 56. Claim 56 is submitted to be completely supported by the application as originally filed and to add no new matter.

Claim 56 is submitted to patentably distinguish the prior art of record.

Rejoinder Request

Claims 15, 17, 20, 27, 28, 31, 32 and 34-40 were withdrawn pursuant to a species election pending the allowance of a generic claim. The Applicant submits that independent claim 1 is generic to all of the species identified by the Examiner and is allowable for the reasons discussed above.

Accordingly, the Applicant submits that claims 15, 17, 20, 27, 28, 31, 32 and 34-40 (which depend from claim 1) are entitled to consideration as provided by 37 CFR § 1.141 and requests rejoinder of these claims.

Conclusions

In view of the amendments and arguments presented above, the Applicant submits that this application is now in condition for allowance and respectfully requests reconsideration and allowance of this application.

Respectfully submitted,
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